MOTION FILED

APR 19 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1219

ANDREW G. GRUTKA,
Petitioner,
v.
ALEX V. BARBOUR, Regional Director of the Thirteenth Region, National Labor Relations Board,
and
LAY TEACHERS FEDERATION OF THE GARY DIOCESE, LOCAL 3493,
Respondents.

MOTION OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE IN SUPPORT OF PETITION OF CERTIORARI

WARREN L. JOHNS
WALTER E. CARSON
JOHNS & CARSON
6930 Carroll Avenue
Washington, D. C. 20012
(301/270-2552)
Attorneys for Amicus Curiae

LEE BOOTHBY
1310 St. Joseph Road
Berrien Springs, MI 49103
(616) 471-7787
Of Counsel

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

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MOTION OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The General Conference of Seventh-day Adventists respectfully moves this Court for leave to File the accompanying Brief in this case as Amicus Curiae. The consent of the Attorney for the Petitioner herein has been obtained, and the office of the Solicitor General has also indicated its willingness to consent to the filing of such a brief. The Attorney for the Respondent, Lay Teachers Federation of the Gary Diocese, Local 3493, has refused to consent to the filing of a Brief by the General Conference of Seventh-day Adventists as Amicus Curiae.

The Applicant, General Conference of Seventh-day Adventist, has a significant interest in this case for the reason that the issues raised involve the application of the National Labor Relations Act to Church operated schools.

The Seventh-day Adventist Church operates the second largest Protestant parochial school system in the United States.

The issues involved in this case are therefore of vital interest to the Seventh-day Adventist Church and its members. Any decision in this area of the law has a direct impact on the operation of the Church's schools and other institutions.

The Seventh-day Adventist Church has long been active in the area of religious liberty and the preservation of the separation of Church and State.

WARREN L. JOHNS
WALTER E. CARSON
JOHNS & CARSON
6930 Carroll Avenue
Washington, D. C. 20012
(301/270-2552)
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BRIEF OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE IN SUPPORT OF PETITION OF CERTIORARI

INTEREST OF THE AMICUS CURIAE

The Seventh-day Adventist Church is a recognized world-wide religious denomination. It became an original church body in 1863 and today it has a total membership of slightly less than 2½ million people. Within the fifty states and the District of Columbia are more than 3,000 local Seventh-day Adventist congregations having a membership of approximately 500,000.

The Seventh-day Adventist Church maintains over 3500 elementary schools, 396 secondary level schools, 76

colleges and universities and 33 schools of nursing in its world-wide educational system.

In the United States alone the Seventh-day Adventist Church operates the second largest Protestant parochial school system. This includes almost 1000 elementary schools, more than 81 secondary level institutions, and 11 colleges and universities.

The Church in the United States employs more than 3000 elementary teachers and approximately 4000 high school and college level teachers and instructors.

The elementary schools operated by the Church in this country have an enrollment in excess of 54,000 students. There are approximately 24,000 children now attending the Church's secondary schools. The enrollment in the colleges and universities operated by the Church in this country approaches 18,000 students.

It is the historical teaching of the Seventh-day Adventist Church that its members should not join or financially support labor unions and similar organizations.

The teachings of the Church relative to involvement in unions has prompted the discharge from employment of Seventh-day Adventist who, because of religious conviction, were unable to join or financially support a labor union. See for example *Cooper* v. *General Dynamics*, 553 F. 2d 163 (5th Cir. 1976).

The Seventh-day Adventist Church views its schools as an integral part of the Church. A large portion of the budget of the Church is committed to the maintenance and operation of its world-wide educational system.

The question as to whether the Church must be denied access to the courts until after an administrative agency has completed its process is therefore of vital concern to the Church.

Equally important to the Church is the question of whether the First Amendment is a barrier to NLRB jurisdiction over schools and other institutions which the Church operates as an integral part of its mission.

The Seventh-day Adventist Church has long been active in the defense of religious freedom. It has championed the free exercise of religion not only for its own members but also on behalf of those of other religious persuasions who have sought the protection of their Constitutional rights under the Religion Clauses of the First Amendment.

The important constitutional issues raised in this case; the ultimate impact of any holding in regard thereto; the concern of the Church for the full protection of its right to operate its schools free of excessive government entanglement; and the importance of preserving the free exercise of religion has prompted the filing of this brief.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI HERE INVOLVES A QUESTION OF EXCEPTIONAL IMPORTANCE DIRECTLY AFFECTING THE RIGHTS OF CHURCHES AND THEIR MEMBERS TO DIRECT JUDICIAL RELIEF WHERE FIRST AMENDMENT RIGHTS ARE CLAIMED TO BE VIOLATED

The issues raised by the Petition pertain directly to the rights of churches and their members to have direct access to the federal courts where First Amendment rights are claimed to have been violated.

The Religion Clauses of the First Amendment provide:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; . . . ."

The First Amendment has therefore erected a wall between church and state. "That wall must be kept high and impregnable." *Everson* v. *Board of Education,* 330 U.S. 1, 18 (1946).

This Court has declared that it would "not tolerate either governmentally established religion or governmental interference with religion." *Waltz* v. *Tax Commissioner of the City of New York,* 397 U.S. 664, 669 (1970).

In *Waltz* this Court stressed the importance of chartering a judicial course "that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion." 397 U.S. at 672.

The doctrinal element found in *Waltz* is the emphasis on what the Court's opinion describes as "entanglements" between church and state and the corresponding necessity of clearly examining governmental actions to see if the government thereby becomes excessively involved in the affairs of the church.

Underlying the twin clauses of the First Amendment is the idea that the state and the churches have separate functions to perform and that the state may neither intrude into the affairs of the churches nor actively intervene in religious matters. See *The Waltz Decision: More On The Religious Clauses Of The First Amendment,* 69 Mich. L. Rev. 179, 201.

In the case now before this Court the petitioner filed a complaint against the National Labor Relations Board seeking a preliminary and permanent injunction against the application of the National Labor Relations Act to the schools operated by the Roman Catholic Diocese of Gary, Indiana.

The petitioner's argument is based upon the contention that the Wagner Act as amended by the Taft Hartly Act of 1947, 29 U.S.C. § 141 et seq. cannot constitutionally be protracted to apply to labor relations between the Catholic Diocese of Gary and lay teachers employed in their parochial schools, as to do so would violate rights guaranteed by the First Amendment of the United States Constitution.

It is the position of the NLRB that it has exclusive jurisdiction until the exhaustion of administrative remedies (App. A 2)

Freedoms of the First Amendment stand in a preferred position. *Saia* v. *New York,* 334 U.S. 558 (1948). Of all the constitutional guarantees, the protection of religious liberty has been the most exalted. See P. Kauper, Religion and the Constitution, 19 (1964) and the cases cited therein.

It is submitted that the injection of the NLRB into the internal affairs of the parochial schools of the Diocese of Gary constitutes an impermissible invasion into an area where the Church must remain autonomous.

This Court, in *Waltz,* has recognized the fact that a religious body maintains its parochial schools for the primary purpose of assuring future adherence to that particular faith. 397 U.S. at 671.

The effect of NLRB presence in this case resulted in the interposition of an arm of the state between the Church and those working to carry out the mission of the Church. Such action presents the spector of state interference with the free exercise of religion.

Likewise the introduction of the NLRB into the internal affairs of the parochial schools operated by petitioner constitutes state action which may well have the effect of inhibiting religion contrary to the proscriptions of the Establishment Clause. *Committee for Public Education* v. *Nyquist,* 413 U.S. 756, 773 (1973).

The District Court was rightly concerned about "the alleged harmful effect which awaiting the exhaustion of internal NLRB appellate proceedings may have on the plaintiff's right to provide religious instruction"; and "the injection of the NLRB into the internal structure of the parochial schools" which "necessarily accentuates any dissention among the teachers, both lay and religious." (App. A 6)

The application of the doctrine of administrative exhaustion , as espoused in the decision of the Court of Appeals, to the Seventh-day Adventist Church would raise serious church-state problems. Teachers employed by the Seventh-day Adventist Church are generally licensed or credentialed by the Church as missionaries in recognition of their role as partners with the clergy in matters of a spiritual nature.

The position of the NLRB carried to its logical conclusion would permit that agency to assert jurisdiction over the entire ministry of the Church. The Church would, however, be deprived of access to the federal courts throughout the full course of the NLRB investi-

gations and proceedings. Such a situation would be intolerable to the Church and a direct invasion into matters spiritual.

Within the framework of the Seventh-day Adventist Church there can be no separation of the mission of the Church and the operation of its schools. This can readily be noted from the statement voted by the delegates to the Vienna, Austria, Quinquennial General Conference Session of the Seventh-day Adventist Church on July 18, 1975. It said:

> . . . Seventh-day Adventist denominationally operated institutions such as schools, hospitals, and publishing houses are the church fulfilling its teaching ministry, its health ministry, its literature ministry; therefore they are indispensable to, and indivisible from, the church's total ministry in carrying the gospel to all the world . . .

The Court, in ruling on the Motion to Dismiss filed by the NLRB faced allegations clearly setting forth a fundamental constitutional issue. In considering the Defendant's motion the allegations contained in the complaint had to be accepted by the Court as true and construed favorably to the pleader. *Scheuer* v. *Rhodes,* 416 U.S. 232 (1974).

The thrust of Petitioner's claims are directed at violations of Constitutional principles as opposed to labor law policy, thus the District Court had jurisdiction over the issues raised. *Leedom* v. *Kyne,* 358 U.S. 184 (1958); *McCulloch* v. *Sociedad National,* 372 U.S. 10 (1973).

As is true of other administrative bodies, the National Labor Relations Board is not empowered to adjudicate constitutional claims. *Oestereich* v. *Selec-*

tive Service Bd., 393 U.S. 233, (1968), (Harlan J. concurring in result).

By reason of their broader and more varied jurisdiction, federal district courts are better equipped than administrative or regulatory agencies to vindicate constitutional rights. *Securities & Exch. Comm.* v. *Wall Street Transcript Corp.*, 294 F. Supp. 298, 307 reversed on other grounds. 422 F.2d 1371 (2nd Cir. 1970), Cert. denied 398 U.S. 958 (1970).

As the Ninth Circuit has noted in *Seay* v. *McConnell Douglas Corp.*, 427 F.2d 996 (9th Cir., 1970):

> "The policy behind the pre-emption doctrine is not served by deferring to the Board where a constitutional question is validily presented. The Board's special expertise in labor controversies does not extend to the interpretation of the Constitution. That field has traditionally been reserved to the courts." 427 F.2d at 1002-1003.

Whenever and wherever the state intrudes into the affairs of the church, judicial relief must be immediately available or the principles imbodied within the Religious Clauses of the First Amendment become meaningless.

To insist that Petitioner plead its case before an agency which is powerless to decide the constitutional issued raised herein would be to impose an onerous and needless burden upon the Dioceses. This futile exercise would serve the interests of no one and would merely impede ultimate judicial relief.

CONCLUSION

The Petition for a Writ of Certiorari sought in this case should be granted.

Respectfully submitted,

WARREN L. JOHNS
WALTER E. CARSON
JOHNS & CARSON
6930 Carroll Avenue
Washington, D. C. 20012
(301/270-2552)
Attorneys for Amicus Curiae

LEE BOOTHBY
1310 St. Joseph Road
Berrien Springs, MI 49103
(616) 471-7787
Of Counsel

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OPPOSITION TO THE MOTION OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

CHARLES ORLOVE,
LAWRENCE A. POLTROCK
Counsel for Lay Teachers Federation of the Gary Diocese, Local 3493, American Federation of Teachers AFL-CIO
One of Respondents.

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The Lay Teachers Federation of the Gary Diocese, Local 3493, respectfully files this opposition to the motion of the General

Conference of Seventh-Day Adventists (hereinafter referred to as "Applicant") for leave to file brief as Amicus Curiae. The Applicant correctly stated that the undersigned refused to consent to the filing of a Brief by Applicant as Amicus Curiae and said refusal was for the following reasons.

The Union has proposed the following as the issue presented in this matter:

> Whether a United States District Court has jurisdiction to enjoin proceedings by the National Labor Relations Board with respect to private schools operated by a religious entity. (Un. Brief p. 2)

The National Labor Relations Board has posed the question as follows:

> Whether a District Court may enjoin National Labor Relations Board representation and unfair labor practice proceedings, where the procedures established by the National Relations Labor Act provide an adequate method for review of petitioner's contentions and have not been exhausted. (NLRB Brief p. 2)

As the foregoing issues show, the question here is not whether the National Labor Relations Act may be applied to Church operated schools as asserted by the Applicant. The very narrow question presented here is only whether the Federal District

Court had jurisdiction to enjoin proceedings before the National Labor Relations Board. The question raised by Applicant, which is not present here, that is whether the National Labor Relations Act may be applied to Church operated schools has been and is now pending judicial review in appropriate U.S. Courts of Appeals in the manner provided by the National Labor Relations Act (Un. Brief n.9, p. 16). Therefore, the Applicant has misconceived the real question pending in this matter, and no bases exists for intervention by Applicant.

Further, this matter has been thoroughly briefed by the three parties involved and there is no showing that the Petitioner's presentation fails to fully and adequately present the position which would be advanced by the Applicant. For the foregoing reasons the Union respectfully requests that the motion of the Applicant for leave to file reply brief as Amicus Curiae be denied.

Respectfully submitted,

CHARLES ORLOVE
Jacobs, Burns, Sugarman & Orlove
201 North Wells Street,
Suite 1900
Chicago, Illinois 60606.
Telephone: [312] 372-1646
LAWRENCE A. POLTROCK
Ligtenberg, DeJong, Poltrock & Giampietro
134 North LaSalle Street,
Chicago, Illinois 60602
Telephone: [312] 236-0606
Counsel for Lay Teachers Federation of the Gary Diocese, Local 3493, American Federation of Teachers, AFL-CIO — One of Respondents.